

**MAT BIN AWANG KECHIK & ORS.
v. PUBLIC PROSECUTOR**[C. A. (Thomson C.J., Syed Sheh Barakbah and Neal JJ.)
April 20, 1959]

[K. L.—F.M. Criminal Appeal No. 7 of 1959]

*Criminal Law and Procedure — Jury trial —
Direction to rural jury — Accomplice evidence —
Adequate direction as to corroboration.*

In a direction to a rural jury the question of what amounts to a participation in a crime should be elaborated and expressed in simple language and for the better understanding of the jury they should have had explained to them the reasoning which lies behind the suspicion with which the law regards accomplices' evidence, that an accomplice has an interest in minimising his own part in the events to which he speaks and in exaggerating the part played by the prisoner.

There must not only be an adequate direction as to the necessity for corroboration but the jury must also be told what in law is meant by corroboration. The jury should be told that corroboration must consist of independent evidence showing in the first place that the crime was committed and in the second place that the accused was connected with it in the way alleged against him by the prosecution.

Cases referred to:—

- (1) *Davies v. Director of Public Prosecutions* [1954] A.C. 378; [1954] 1 All E.R. 507; 38 Cr. App. R. 11; [1954] 2 W.L.R. 343.
- (2) *Rex v. Zielinski* [1950] 2 All E.R. 1114; 34 Cr. App. R. 193.
- (3) *Rex v. Baskerville* [1916] 2 K.B. 658, 667.

COURT OF APPEAL, appeal from Alor Star.

Mrs. B. H. Oon for the 1st and 2nd appellants.

C. O. Lim for the 3rd appellant.

Mohamed Salleh bin Abas (Federal Counsel) for the respondent.

Thomson C.J. (delivering oral judgment of the Court): These three appellants were convicted by a jury at Alor Star on a charge for murder in contravention of section 302 of the Penal Code. The charge against them was that on the 31st of May this year at Lubok Batu in the District of Kota Star they jointly committed murder by causing the death of one Ismail bin Taib.

The prosecution case was that on the night in question somehow or other the deceased man came into the company of the three appellants and some other persons, that in the course of the evening the three appellants formed a common intention to kill the deceased and that in pursuance of that common intention one or other of the appellants struck him a severe blow with a large piece of wood causing injuries whereby he died.

A It is not necessary for the purpose of the present appeal to discuss the evidence in detail beyond observing that the case against the appellants stood or fell in accordance with the view that was taken of the evidence of two prosecution witnesses who alleged they were present throughout, before and at the time of the killing and that subsequently they both assisted in disposing of the dead body

B The defence at the trial as regards two of the appellants was the customary defence of alibi.

C The prosecution case, however, depended, and depended entirely, on the evidence of two witnesses who in our view for the purposes of the treatment to be accorded to their evidence might well have been regarded as accomplices. If they were to be regarded as accomplices then from the point of view of the law of evidence their evidence should not have been relied upon unless there was what the law regards as corroboration.

D In our view the direction given to the jury in this connection by the learned trial Judge although so far as it went it was technically correct was in certain respects inadequate. What he said was this:—

E "An accomplice is one who participates in the commission of an offence. Whether these two witnesses who gave evidence with regard to the disposal of the deceased's body and so on participated in this crime is a question of fact for you, Gentlemen, to decide from the evidence. If you come to the conclusion that they were accomplices then you must look for corroboration of their evidence before you can act upon it even if you believe them."

F Now, there is not a word in that portion of the charge which is not technically speaking at any rate correct and supported by the decision of the House of Lords in the case of *Davies v. Director of Public Prosecutions*⁽¹⁾. In our opinion, however, as a direction to a rural jury in Malaya it was unduly technical. In our view the question of what amounts to participation in a crime should have been elaborated and expressed in simple language and for the better understanding of the jury they should have had explained to them the reasoning which lies behind the suspicion with which the law regards accomplices' evidence, that an accomplice has an interest in minimising his own part in the events to which he speaks and in exaggerating the part played by the prisoner.

G If the matter had gone no further than that we should not have been disposed to interfere with the convictions. But in our view it did go a little further because, again bearing in mind that a rural jury was involved, we do not think that the direction as to what amounted to corroboration was by any means adequate. There was indeed a certain amount of evidence which perhaps was not the evidence of accomplices and which perhaps could have been regarded as corro-

borative evidence. We think, however, the matter should have been more fully explained to the jury. In the case of *Zielinski*⁽²⁾ it was held that there must not only be an adequate direction as to the necessity for corroboration but that the jury must also be told what in law is meant by corroboration. In the present case that was not done.

The best statement of what is meant in law by corroboration in this connection is probably still to be found in the old leading case of *Rex v. Baskerville*⁽³⁾ where Lord Reading said:—

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused."

In our view in the present case the jury should have been told that corroboration must consist of independent evidence showing in the first place that the crime was committed and in the second place that the appellants were connected with it in the way alleged against them by the prosecution. In so far as this was not done there was a lack of direction and the convictions therefore cannot stand.

Fortunately we are not subject to the limitations to which the Court of Criminal Appeal is subject in England and accordingly we order a retrial of all the appellants.

Retrial ordered.

Solicitors: *Lim, Lim & Oon.*

Re CHOO JEE JENG

[O. Cr. J. (Ambrose J.) August 29, 1959]

[Singapore—Habeas Corpus No. 1 of 1959]

Habeas Corpus — Detention under the Preservation of Public Security Ordinance, 1955, s.3(1) — Grounds of detention supplied under s.5(2) — Right of appeal to Appeal Tribunal under s.5(1) — Criminal Procedure Code (Cap. 132), s.375.

Preservation of Public Security Ordinance, 1955, s.3(1) — Prevention from "acting in any manner prejudicial to the security of Malaya..." — Whether ultra vires the Legislative Assembly established by the Singapore Colony Order in Council, 1955.

Criminal Law and Procedure — Habeas Corpus — Detention under the Preservation of Public Security Ordinance, 1955.

A Constitutional Law — Colonial Legislature — Power to make legislation having extra-territorial operation — Enabling statute.

This was an application under section 375 of the Criminal Procedure Code for a writ of *habeas corpus*. The Court granted an order *nisi* directing the Chief Secretary and the Commissioner of Police to show cause why the writ should not issue. In their affidavits they stated that the applicant was detained under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955.

It was contended for the applicant (1) that section 3(1) of the Ordinance makes provision for extra-territorial matters, namely, the security of the Federation of Malaya and the maintenance of public order and essential services therein and that the subsection was therefore *ultra vires* the Legislative Assembly established in Singapore by the Singapore Colony Order in Council, 1955; (2) that where a statute requires that a public officer should be satisfied of something before exercising a statutory power, if it could be shown that there were no grounds on which he could be so satisfied, the Court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts; and (3) that the statement of the grounds of detention supplied to the applicant was inadequate and, therefore, that the detention was improper.

Held: (1) the principle to be applied in deciding whether a law is *ultra vires* the legislature of the Colony of Singapore is laid down in *Wallace Bros. & Co. Ltd. v. Commissioner of Income Tax, Bombay*⁽²⁾. The test is whether section 3(1) of the Ordinance is for the peace, order and good government of the Colony, notwithstanding the fact that it may relate to persons, acts or things beyond the limits of the Colony. As the subsection provides for public security and aims at stamping out activities prejudicial to public security carried on in the Federation of Malaya and the Colony by a subversive organization operating in both territories, it is for the peace, order and good government of the Colony. Accordingly the subsection was not *ultra vires* the Legislative Assembly of the Colony;

(2) as a statement of the grounds of detention had been supplied to the applicant in accordance with section 5(2) of the Ordinance, the applicant failed to show that there were no grounds on which the Governor could be satisfied that the detention was necessary. It followed therefore that neither of the inferences suggested by counsel for the applicant could be drawn;

(3) as section 3(1) of the Ordinance imposed a subjective test, it was not open to the Court to inquire whether in fact the Governor had reasonable grounds for being satisfied that the detention was necessary. If the Ordinance did not impose a subjective test, the Court would have refused a writ of *habeas corpus* on the ground that an alternative remedy was available and that a writ of *habeas corpus* not being a writ of course might be refused for that reason.

G Cases referred to:—

- (1) *Macleod v. Attorney-General for New South Wales* [1891] A.C. 455, 458.
- (2) *Wallace Bros. & Co. Ltd. v. Commissioner of Income Tax, Bombay* (1948), 75 I.A. 86, 98; A.I.R. 1948 P.C. 118; 52 C.W.N. 620.
- (3) *Ross-Chumis v. Papadopoulos* [1958] 2 All E.R. 23, 33; [1958] 1 W.L.R. 546, 560, P.C.
- (4) *Liversidge v. Anderson* [1941] 3 All E.R. 338; [1942] A.C. 206.
- (5) *Ex parte Corke* [1954] 2 All E.R. 440; [1954] 1 W.L.R. 899.